

# Notice of Allowability

Application No.

09/857,581

Examiner

Delia M. Ramirez

Applicant(s)

FADER ET AL.

Art Unit

1652

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/21/2005.
2. ☒ The allowed claim(s) is/are 1,11-19,26,29-33 and 51-69.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_.
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of the Application***

Claims 1, 11-19, 26, 29-33, 51-69 are pending.

Amendment of claims 16, 30-31, 51-69 and submission of a new sequence listing in a communication filed on 11/21/2005 are acknowledged.

In a telephone conversation with Lori Beardell on 2/1/2006, an agreement was reached to amend claim 12 to place the application in condition for allowance.

It is noted that while claims 70-72 appear in the listing of claims as "not entered", these claims are not pending as they were introduced in an After Final amendment filed on 9/14/2004 which was not entered by the Examiner (Advisory Action mailed on 10/19/2004) and were not introduced in the amendment filed with the RCE of 2/25/2005.

### ***Examiner's Amendment***

1. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this Examiner's amendment was given in a telephone interview with Lori Beardell on 2/1/2006.

Please replace claim 12 as follows:

Claim 12. An isolated transformed host cell comprising the chimeric polynucleotide of claim 11.

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***Reasons for Allowance***

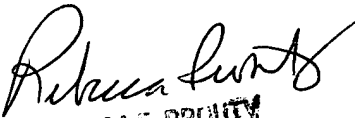
3. The following is an Examiner's statement of reasons for allowance. Although the prior art discloses nucleic acids encoding isoflavone synthases (see Siminsky et al. as previously cited), the Examiner has found no teaching or suggestion in the prior art directed to a nucleic acid encoding the polypeptide of SEQ ID NO: 66. Steele et al. (cited in previous Office actions) is no longer considered available prior art in view of Applicant's declaration under 37 CFR 1.131 filed on 10/19/2004. Therefore, claims 1, 11-19, 26, 29-33, 51-69 directed to nucleic acids encoding the polypeptide of SEQ ID NO: 66, isolated host cells transformed with said nucleic acids, and a method to recombinantly produce the polypeptide of SEQ ID NO: 66 are allowable over the prior art of record.

***Conclusion***

4. Claims 1, 11-19, 26, 29-33, 51-69 are allowed.
5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.
- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
February 2, 2006

  
REBECCA E. PROUTY  
PRIMARY EXAMINER  
GROUP 1800  
1600